IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5085 OF 2003
(For condonation of delay)
IN
CRIMINAL APPEAL NO.1459 OF 2003

The State of Maharashtra — Applicant
vs.
1. Vijay Vithal Divate & ors. — Respondents

Ms.V.R.Bhonsale, APP for the State.

Mr.Milind Deshmukh for respondent nos. 1, 2, 4 to 6.

Respondent no.3 absent though served.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 14th February 2005

P.C.

The Additional Sessions Judge, Pune in Sessions Case No.529/2001 by his judgment dated 21st April 2003 acquitted all the accused persons (respondents 1 to 6 herein) of the offences punishable under Sections 143, 147, 148, 149, 364, 307 and 302 IPC. Upset thereby, the State has preferred the criminal Appeal. Since the said Criminal Appeal suffers from delay of 97 days, by the present Application, it is prayed that delay in filing the aforesaid Criminal Appeal may be condoned.

2. The learned Additional Public Prosecutor referred to the facts stated in the application and submitted that there is no negligence on the part of the State or its

functionaries in filing the criminal Appeal and, therefore, delay be condoned.

3. The application for delay is stoutly opposed by the respondents. An affidavit in reply in opposition to the application by the respondent no.6 has been filed. The learned counsel for the respondents also sought to place reliance upon the judgment of the Patna High Court in the case of State of Bihar vs. Dhajadhari Rai, AIR 1985 Patna 187.

4. We considered the submissions of the learned Additional Public Prosecutor and the learned counsel for the respondents.

5. As per the averments made in the application, the application for obtaining the certified copy of the judgment dated 21st April 2003 was made on 23rd April 2003. The certified copy was ready on 3rd June 2003 and delivered on 5th June 2003. The concerned Public Prosecutor by his letter dated 5th August 2003 addressed to the Law and Judiciary Department, Mantralaya, Mumbai opined that appeal be filed against the judgment of acquittal. The Law and Judiciary Department scrutinised the papers and decided to file an appeal and, accordingly, issued Government Resolution on 18th August 2003 asking the office of public Prosecutor, High Court,

Appellate Side, Bombay to file an appeal. The Government Resolution dated 18th August 2003 was received by the public Prosecutor on 22nd August 2003 and appeal came to be filed on 6th December 2003.

6. The purported explanation in paragraph 4 of the application reads thus:

> "4. The applicant states that the delay was caused in the circumstances mentioned hereinabove. It was due to heavy work load, pressure of work and non-availability of stengoraphers. The said delay was neither intentional nor due to negligence and more precisely due to heavy work load in our Government Offices and in the interest of justice the same may kindly be condoned."

7. Not only that the aforesaid explanation is stereotype but also we find that the said explanation is not true. When we had a close look at the memorandum of appeal, we found that in fact the appeal was ready on 11th September 2003. This is clearly reflected from the date mentioned at page 9 of memorandum of criminal appeal. If the appeal was ready on 11th September 2003 as is borne out from the memo of appeal, where was the question of heavy work load, pressure of work and non-availability of stenographers. But for the gross negligence the criminal appeal could have been easily filed on 11th September 2003, the date on which it was prepared or within couple of days therefrom. The fact that it was not so done clearly shows the inaction,

laxity and want of due care and caution. What had indeed pained us is that in the application for condonation of delay the State has not chosen to make candid and truthful statement that resulted in delay, but instead set up incorrect and untrue statement.

8. It does not behove of the State of Maharashtra to put forth in almost every application for condonation of delay (at least the applications for delay that are coming up before us every day), the stereotype explanation that delay occurred due to heavy workload, pressure of work and non-availability of stenographers. If these factors are resulting in delay in filing the appeals in time, the State must provide sufficient resources to the office of Public Prosecutor. But such stereotype explanation is no explanation in the eye of law.

9. Be that as it may, in so far as the present case is concerned, the appeal was ready on 11th September 2003 but it was filed on 6th December 2003 and, therefore, even the stereotype explanation that delay occurred due to heavy workload, pressure of work and non-availability of stenographers is also not available to the State.

10. No sufficient cause is made out in the present case.

11. Resultantly, criminal application for condonation of delay deserves to be rejected. We order accordingly.

12. Let copy of this order be sent to the Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai; the Principal Secretary, Law and Judiciary Department, Mantralaya, Mumbai and the Advocate General, State of Maharashtra, Mumbai.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)